

# LYNCHBURG CITY COUNCIL

## Agenda Item Summary

MEETING DATE: **December 13, 2005**

AGENDA ITEM NO.: 3

CONSENT: **X**

REGULAR:

CLOSED SESSION:  
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Revised Memorandum of Understanding with the Lynchburg Baseball Corporation (LBC)**

RECOMMENDATION: Authorize the City Manager to execute a revised Memorandum of Understanding (MOU) between the Lynchburg Baseball Corporation and the City Council of the City of Lynchburg.

SUMMARY: The September 10, 2002 MOU was premised on the principle that all revenues generated at the City's Baseball Stadium will be used to support the operations of LBC, operations and maintenance of the Stadium, a capital reserve, and debt service in excess of the City's initial investment for Baseball Stadium renovations. The end of the 2005 season marked the completion of the second year of operations under the MOU. As both organizations began to operationalize the MOU, there were three provisions that presented significant challenges: (a) LBC would deposit all of its revenues, (b) following adoption of the budget the City shall disburse payments to LBC, and, (c) an annual audit of the Fund will be performed by the City's external auditors. In order to provide for a more efficient operation of the agreement the revised MOU provides for the following changes:

- (a) Change the requirements for LBC to deposit all its revenues with the City to a requirement for LBC to report all its revenues, and, eliminate the provision that the City will disburse payments to LBC following the adoption of the annual budget. At the time the agreement was developed it was contemplated that LBC would deposit its revenues and the City would in essence disburse them back to LBC based on a budget. LBC is a private entity and after further assessing this process questions were raised regarding commingling private funds with public funds. After discussing some of the potential problems, City staff and LBC thought it advisable to report revenues and expenditures with a cash settlement at the end of the year to avoid any issues with public versus private funds.
- (b) Change the requirement for an annual audit of the Fund to an agreed upon procedures engagement. This was a recommendation by the City's external auditor following completion of the June 30, 2004 audit. The American Institute of Certified Public Accountants (AICPA) provides four levels or engagements (a) an audit, (b) a review, (c) a compilation, and (d) agreed upon procedures. An audit is the most intensive engagement which involves significant tasks to express an audit opinion. These tasks involve reviews of internal controls, accounts receivables, fixed assets to mention a few. Although the Fund is included in the annual audit of the City, a special audit of the Fund would did not seem practicable since it would have to also extend to LBC to support the revenues and expenditures it accounted for back to the City. After discussing this matter with LBC and the external auditors it was agreed the best type of engagement was an agreed upon procedures engagement. Under this approach, the City and LBC would agree on procedures that support the revenues and expenditures reported to the City and the compliance with the MOU.

Representatives from LBC have reviewed and agreed to these changes.

PRIOR ACTION(S): December 6: Finance Committee

FISCAL IMPACT: N/A

CONTACT(S): Michael W. Hill, Director of Financial Services 455-4218

ATTACHMENT(S): Revised Memorandum of Understanding between the Lynchburg Baseball Corporation and the City Council; Resolution

REVIEWED BY: lkp

## RESOLUTION

BE IT RESOLVED that the City Manager is hereby authorized to execute the revised Memorandum of Understanding between the Lynchburg Baseball Corporation and City Council

Adopted:

Certified:

\_\_\_\_\_  
Clerk of Council

163L

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
LYNCHBURG BASEBALL CORP.  
AND THE  
CITY COUNCIL  
OF  
LYNCHBURG, VIRGINIA  
(dated 12/06/05)**

This Binding **Memorandum of Understanding (MOU)** between the **Lynchburg Baseball Corp. (LBC)** and the **City of Lynchburg (City)** is entered into December 15, 2005. **This MOU serves** as the **basis** for the development of a more detailed agreement regarding the maintenance **and** operations of the Baseball Stadium.

**ARTICLE I-GUIDING PRINCIPLE**

This MOU is premised on the principle that all revenues generated at the City's Baseball Stadium will be used to support the operations of LBC, operations and maintenance of the Stadium, a capital reserve, and debt service in excess of the City's initial investment for Baseball Stadium renovations. All revenues include revenues generated by LBC, City events, events held at the Baseball Stadium by a promoter, and funds generated through fundraising activities, donations and naming rights. Further, it is understood that the City is not interested in managing or operating a baseball club.

**ARTICLE II-STADIUM DESCRIPTION**

The Stadium provided for the use of LBC shall be renovated in substantial accord with the plans and specifications attached hereto or listed as Exhibit A, which plans and specifications may be modified and supplemented by the City from time to time, and shall in all respects provide a high quality professional playing field for the use of LBC and have a seating capacity of approximately 3,500 individuals, a scoreboard, public address system, and shall in all respects comply with Minor League Standards, and with the Americans with Disabilities Act and all fire code, building, health department and other applicable statutes, ordinances, rules and regulations. The City expressly reserves the right to expand the seating capacity of the stadium and the City shall undertake such expansion on dates outside the Baseball Season or, if necessary, during the Baseball Season, in a manner that (i) is minimally disruptive to LBC, and (ii) does not diminish the minimum seating capacity of the Stadium. The City expressly reserves the right to reconfigure Stadium seating with non-permanent seating for City Events.

**ARTICLE III-ADVISORY COMMITTEE**

An Advisory Committee shall be formed and a Charter outlining the duties of the Advisory Committee shall be adopted. The purpose of the Advisory Committee will be to work together to determine the most cost-efficient methods to operate and maintain the Baseball Stadium as described in the site plan and to maximize marketing opportunities to achieve the greatest return on investment. The Advisory Committee shall consist of a representative appointed by the City Manager, the Financial Services Director, the Director of Parks and Recreation, the Director of Buildings and Grounds, and four

representatives of LBC, one of which shall be the General Manager. A primary responsibility of the Advisory Committee will be to review the budget prepared by LBC for its annual operations and the budget prepared by the City for the operations and maintenance of the Baseball Stadium, a capital reserve, and debt service and to forward the same to LBC and the City Manager. The City Manager will forward his recommendations regarding the budget to the City Council for consideration during its annual budget process.

#### **ARTICLE IV-BASEBALL STADIUM FUND**

A "Baseball Stadium Fund" (the Fund) will be created by the City to account for all revenues and expenditures at the Baseball Stadium.

All revenues generated by LBC, City events and events held at the Baseball Stadium by a promoter and funds generated through fundraising activities, donations and naming rights will be ~~deposited into~~ reported quarterly to the City for inclusion in the financial records of the Fund. These revenues include funds received for admission, skyboxes, advertising, all concessions including beer and wine sales, special events, rental fees, merchandise, and any and all other revenue generated at the Baseball Stadium by LBC, the City or a promoter.

All expenditures attributed to the operations of LBC will be reported quarterly to the City for inclusion in the financial records of the Fund, operations and maintenance of the Stadium, a capital reserve, and debt service above the City's initial commitment of \$3,384,302 shall be accounted for in the Fund.

Funds that have been raised through fundraising activities, donations and naming rights shall serve as the beginning balance for the Fund.

LBC and the City shall annually submit a Baseball Stadium budget to the Advisory Committee for review and shall adhere to the City's annual budget calendar. The Advisory Committee, with the approval of the City Manager, shall manage the Fund and adjust revenues and expenditures within the Fund as warranted during the fiscal year. The Advisory Committee shall forward a Fund budget to the City Manager for consideration in the City's annual budget.

~~Following adoption of the Stadium Fund budget by the City Council, the City shall disburse payments to LBC for its operations. A schedule of disbursements shall be determined.~~

Quarterly reports on the Fund shall be performed and submitted to LBC and the City's Finance Committee for review.

~~An annual audit of the Fund shall be performed by the City's external auditors.~~ Annually the City's external auditors will perform an agreed upon procedures engagement of the Fund, with such procedures to be agreed upon both parties to this memorandum of understanding. The expense for the annual audit Annual Independent Report on Agreed Upon Procedures shall be included in Baseball Stadium the Fund. If the annual report reveals that revenues exceed expenditures, excess revenues shall be

shared by LBC and the City with an additional allocation to a capital reserve fund following the paydown of the debt issued above the City's original commitment.

In addition to payments to cover operations costs, the City agrees to pay \$30,000 to LBC annually from the Fund for uses determined by LBC if revenues generated by baseball activities exceed expenditures for baseball operations not including debt service or capital reserve allocations.

The City shall not at any time subsidize the operations of LBC.

#### **ARTICLE V-NON-RELOCATION PROVISION**

LBC shall be committed to retaining a Carolina League team to play at the Baseball Stadium in the City. In the event that LBC fails for more than one (1) year to field a team for the enjoyment of the Lynchburg community, it shall liquidate its assets and pay to the City 50% of the sale of net liquidation proceeds up to \$1,750,000. The amount of liquidation proceeds will decrease in the annual amount of excess revenues over expenditures (profits) for LBC operations only after the difference between the City's initial commitment of \$3,384,302 and the total project cost minus maximum liquidation proceeds (\$1,750,000) is reimbursed to the City. For example only:

Total Project Estimate	\$7,000,000
Initial City Commitment	<u>(3,384,302)</u>
Balance	3,615,698
Liquidation Proceeds	<u>(1,750,000)</u>
Balance	\$1,865,698

The City's maximum share of liquidation proceeds of \$1,750,000 would begin to diminish after the City is paid \$1,865,698 from profits from stadium operations.

If LBC loses its Major League Player Development Contract, or is unable to generate revenues sufficient to support the operation of a professional baseball club, the City or LBC may terminate this MOU and any other agreement between LBC and the City free of the foregoing obligation.

#### **ARTICLE VI-ADDITIONAL PROVISIONS**

The term of this MOU and a more detailed agreement shall be coterminous with the maturity of the debt issued for the Baseball Stadium construction project.

LBC shall agree to operate and manage ball club activities, concessions, marketing for baseball activities, sky box rental and merchandise sales.

The City shall incorporate Baseball Stadium events into its marketing program to complement the LBC marketing program. The Advisory Committee shall consider an effective marketing strategy using LBC and City resources.

The agreement shall outline stadium operations and services to be delivered by LBC, food and beverage service requirements, facility maintenance requirements, and responsibility regarding utility payments.

The City and LBC shall determine the most cost-effective methods regarding stadium operations and maintenance.

If revenues do not equal or exceed expenditures, the City reserves the right to pursue other revenue generating activities, such as, but not limited to a parking fee and/or an admissions tax.

LBC use of the stadium shall be defined in the agreement. LBC shall have exclusive rights to the Baseball Stadium during the baseball season and for tryouts, practice, tournaments, baseball camp, and when applicable, Carolina League playoffs and All-Star Game play.

The undersigned parties have executed this Binding Memorandum of Understanding to evidence and confirm their intent with respect to the operations of LBC, operations and maintenance of the Baseball Stadium, creating a capital reserve, and to fund a defined amount of debt service. By executing this Memorandum, each of the parties hereby agree to work together cooperatively and negotiate, on the basis of the terms set forth herein, the detailed agreement regarding the operations of the Baseball Stadium

Witness the following signatures and seals: